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E-filing

UNITED STATES COURT
NORTHERN DISTRICT OF CALIFORNIA
Eureka Division

NJV

HILDA SOLIS, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF
LABOR,

Plaintiff,

v.

HOLY CHILD RESIDENTIAL CARE
HOME, INC., a corporation, NESTOR
SANTOS, an individual, and ELIZABETH
SANTOS an individual,

Defendants.

CIVIL ACTION NO.

6236

COMPLAINT - LABOR

1. Plaintiff, HILDA L. SOLIS, Secretary of Labor, United States Department of Labor, brings this action to enjoin defendants HOLY CHILD RESIDENTIAL CARE HOME, INC., a corporation, NESTOR SANTOS, an individual, and ELIZABETH SANTOS, an individual, from violating the provisions of the Fair Labor Standards Act of 1938, as Amended, 29 U.S.C. §§ 201-219, hereinafter called the Act, pursuant to section 17 of the Act, 29 U.S.C. §

1 217; and to recover unpaid minimum wage and overtime compensation owing to defendants'
2 employees, together with an equal amount as liquidated damages, pursuant to section 16(c) of the
3 Act, 29 U.S.C. § 216(c).

4 JURISDICTION

5
6 2. Jurisdiction of this action is conferred upon the Court by sections 16(c) and 17 of
7 the Act, 29 U.S.C. §§ 216(c) and 217, and 28 U.S.C. §§ 1331 and 1345.

8 3. Venue lies in the United States District Court, Northern District of California,
9 pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to the claim
10 occurred in Ukiah, California within this district.

11 DEFENDANTS

12
13 4. Defendant, HOLY CHILD RESIDENTIAL CARE HOME, INC. ("Holy Child"),
14 is and at all times hereinafter mentioned was a corporation with an office and a place of business
15 at 1074 Albright Place, Ukiah, California, 95482, within the jurisdiction of this Court, and is and
16 at all times hereinafter mentioned was engaged in the operation of a residential care home for the
17 sick and elderly.

18 5. Defendant NESTOR SANTOS, an individual, at all times hereinafter mentioned
19 acted directly or indirectly in the interest of the corporate defendant in relation to its employees.
20 In particular, Nestor Santos served as the company's President, CEO and CFO. His
21 responsibilities included hiring employees and controlling the terms and conditions of their
22 employment.

23
24 6. Defendant ELIZABETH SANTOS, an individual, at all times hereinafter
25 mentioned acted directly or indirectly in the interest of the corporate defendant in relation to its
26 employees. In particular, Elizabeth Santos served as the company's Secretary. Her
27 responsibilities included hiring employees, setting the work schedule and controlling the terms
28 and conditions of their employment.

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1 compensating said employees for their employment in excess of forty hours per week during
2 such workweeks at rates not less than one and one-half times the regular rate at which they were
3 employed.

4 11. Defendants, employers subject to the provisions of the Act, repeatedly have
5 violated the provisions of sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and
6 215(a)(5), in that they failed to make, keep, and preserve adequate and accurate records of
7 employees and the wages, hours and other conditions and practices of employment maintained
8 by them as prescribed by regulations duly issued pursuant to authority granted in the Act and
9 found in 29 C.F.R. § 516, in that records fail to show adequately and accurately, among other
10 things, the hours worked each workday and each workweek with respect to many employees.
11

12 12. Beginning October 13, 2008, defendants violated the aforesaid provisions of the
13 Act. A judgment which enjoins and restrains such violations and includes the restraint of any
14 withholding of payment of unpaid minimum wage and overtime compensation found by the
15 court to be due to present and former employees under the Act is expressly authorized by section
16 17 of the Act, 29 U.S.C. § 217.
17

18 PRAYER FOR RELIEF

19 WHEREFORE, cause having been shown, plaintiff prays for a judgment against
20 defendants as follows:
21

22 (a) For an Order pursuant to section 17 of the Act, 29 U.S.C. § 217, permanently
23 enjoining and restraining defendants, their officers, agents, servants, employees, and those
24 persons in active concert or participation with them from prospectively violating the provisions
25 of section 15 of the Act, 29 U.S.C. § 215; and

26 (b) For an Order

27 (1) pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c), finding
28 defendants liable for unpaid minimum wage and overtime compensation due defendants'

1 employees and for liquidated damages equal in amount to the unpaid compensation found due
2 defendants' employees listed in the attached Exhibit A for the period beginning October 13,
3 2008 (additional back wages and liquidated damages may be owed to certain employees
4 presently unknown to plaintiff for the period covered by this complaint); or in the event
5 liquidated damages are not awarded;
6

7 (2) pursuant to section 17 of the Act, 29 U.S.C. § 217, enjoining and
8 restraining defendants, their officers, agents, servants, employees and those persons in active
9 concert or participation with defendants, from withholding payment of unpaid back wages found
10 to be due defendants' employees for the period beginning October 13, 2008, through October 12,
11 2010, and pre-judgment interest at an appropriate interest rate; and
12

13 (c) For an Order awarding plaintiff the costs of this action; and

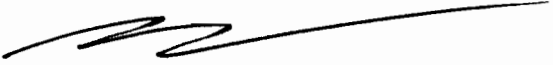
14 (d) For an Order granting such other and further relief as may be necessary or
15 appropriate.

16 Dated: December 13, 2011
17

18 M. PATRICIA SMITH
19 Solicitor of Labor

20 LAWRENCE BREWSTER
21 Regional Solicitor

22 DAVID KAHN
23 Counsel for employment Standards

24 By: 
25 ROSE DARLING (Cal. Bar # 243893)
26 Trial Attorney

27 Attorneys for the Secretary
28 United States Department of Labor

EXHIBIT A

Priscilla Bostwick

Lolita Bradford

Lolita Criste

Esmerelda Cuardo

Antonio Flora

Jamie Hipolito

Maura Hipolito

Leonardo Lastimosa

Adelina Lastimosa

Grail McCoy

Cynthia Terrado

Eduardo Terrado

Maribel Wilson